

**APR 17 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ALMA DELIA SALDANA HERRERA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-70180

Agency No. A75-726-813

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted April 13, 2006<sup>\*\*</sup>

Before: SILVERMAN, McKEOWN and PAEZ, Circuit Judges.

Alma Delia Saldana Herrera, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' summary affirmance of an immigration judge's denial of her application for cancellation of removal. We

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction pursuant to 8 U.S.C. § 1252. We grant the petition and remand for further proceedings.

Petitioner contends that the IJ erred as a matter of law in concluding that she failed to satisfy the continuous physical presence requirement under 8 U.S.C. § 1229b(b)(1)(A). Petitioner testified that she was apprehended by immigration authorities and returned to Mexico in 1997. The IJ concluded that the apprehension and return constituted a break in petitioner's continuous physical presence such that she failed to meet the requisite ten-years before issuance of the Notice to Appear.

We recently held that the fact that an alien is turned around at the border, even where the alien is fingerprinted and information about his attempted entry is entered into the government's computer database, does not in and of itself interrupt the continuity of his physical presence in the United States. *See Tapia v. Gonzales*, 430 F.3d 997, 1002-1004 (9th Cir. 2005). However, we previously held that an administrative voluntary departure in lieu of removal proceedings does constitute a break in continuous physical presence. *See Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 972 (9th Cir. 2003) (per curiam).

On the record before us, we cannot determine whether petitioner's return to Mexico by immigration officials was the result of a "turn-around," as discussed in

*Tapia*, or an administrative voluntary departure, as discussed in *Vasquez-Lopez*.

Accordingly, we grant the petition and remand to the Board for further proceedings concerning the nature of petitioner's contact with immigration officials in 1997.

Petitioner's contentions regarding the BIA's streamlining procedures are foreclosed by our decision in *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 848, 851 (9th Cir. 2003),

**PETITION FOR REVIEW GRANTED; REMANDED.**